

INVITATION TO BID



Department Of Executive Services
Finance And Business Operations Division
Procurement And Contract Services Section
206-684-1681 Tty Relay: 711

Advertised Date: August 18, 2005

ITB Title: Genie Model TML-4000 Light Towers
ITB Number: 05-108 JE
Due Date: September 1, 2005 - 2:00 P.M.
Buyer: Jim Engan, jim.engan@metrokc.gov, (206) 684-1053

NO PRE-BID CONFERENCE

Sealed Bids are hereby solicited and will **ONLY** be received by:
King County Procurement Services Section
Exchange Building, 8th Floor
821 Second Avenue
Seattle, WA 98104-1598
Office Hours: 8:00 a.m. - 5:00 p.m.
Monday - Friday

Bidders must complete and sign the form below (Type or Print)

Company Name

Address

City / State / Postal Code

Authorized Representative / Title

Signature

Phone

Fax

Company Contact / Title

Email

Phone

Fax

Prompt Payment Discount Terms: ____ %- ____ Days, Net ____

This Invitation to Bid will be provided in alternative formats such as Braille, large print, audiocassette or computer disk for individuals with disabilities upon request.

CONTRACT

THIS CONTRACT, made this _____ Day of _____, 2004 by and between King County, Washington, (hereinafter "County") and _____ (hereinafter "Contractor").

WITNESSETH:

WHEREAS, the County has caused Contract documents for:

Contract No: _____ **Contract Title:** **Genie Model TML-4000 Light Towers**

to be prepared for certain Work as described therein; and

WHEREAS, the Contractor has assured the County that it has the specialized expertise and experience necessary to properly Provide the goods and Services in a timely manner and that its Bid includes all of the functions and features required for the goods and Services; and

WHEREAS, the County has accepted the Contractor's offer to provide the goods and Services in accordance with the Contract's terms, Scope of Work and Bid documents;

WHEREAS, by executing this Contract, the Contractor represents that the waiver of the Contractor's immunity under industrial insurance, Title 51 RCW, as set forth in the Contract documents was mutually negotiated by the parties;

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to supply the goods and Services at the price and on the terms and conditions herein contained, and to assume and perform all of the covenants and conditions herein required of the Contractor, and the County agrees to pay the Contractor the Contract price Provided herein for the supply of the goods and Services and the performance of the covenants set forth herein.

THE FURTHER TERMS, CONDITIONS AND COVENANTS of the Contract are set forth in the following exhibit parts each of which is attached hereto and by this reference made a part hereof in the following order of precedence; **[1]** Contract Amendments; **[2]** the Contract Document which includes: Cover (Page 1), Exhibit A – Bid Pricing, Exhibit B – Registration, Exhibit D – Contracting Opportunities Program, Definition of Words and Terms, Standard Contractual Terms and Conditions, Specific Contractual Terms and Conditions, Scope of Work, Attachments C) Equal Benefit Worksheet and Declaration Form, D) Personnel Inventory Report, E) Affidavit and Certificate of Compliance; and **[3]** ITB Addenda

COMPANY NAME: _____

ACCEPTED BY:

KING COUNTY APPROVED BY:

Authorized signature

Authorized Signature

Name and Title (Print or Type)

Name and Title (Print or Type)

DATE ACCEPTED: _____

DATE APPROVED: _____



King County

EXHIBIT A – BID PRICING

ITB NO: 05-108 AT

TITLE: Genie Model TML-4000 Light Towers

NAME OF BIDDER: _____

We acknowledge that **Addenda numbered** **to** have been delivered to us and have been examined as part of the Contract documents.

We acknowledge that attaching our terms or modifying the ITB terms may result in our bid being rejected.

The successful bidder will be responsive, responsible and have the lowest Total price, including freight (but excluding sales tax).

Qty	Description	Total Lot Price (without Sales Tax)
One Lot	Seven (7) Each of Genie 2005 Model TML-4000, Trailer Mounted Light Towers. Diesel Powered, 50 Gallon Fuel Tank, With 6kw Generator Option (water-cooled 3 cylinder Deutz diesel engine (14.3 hp)). Lot Price is to Include Cost of Units, and All Shipping and Handling Costs.	\$



King County

EXHIBIT B – REGISTRATION

Internal Revenue Service (IRS) Reporting Requirements:

Check one:

- ☐ Corporation ☐ Partnership ☐ Sole Proprietor
☐ Other (please specify) _____

Identify:

Dun and Bradstreet Number: _____
(Required for all federally
funded procurements)

State of Incorporation: _____

Provide one:

Federal Tax Number: _____ Social Security Number: _____

What is the official name registered with the IRS for this number? _____

Identify:

UBI Number: _____ Business License Number: _____

Prompt payment discount offered:

Percentage: _____ Days: _____ Standard payment is net 30 days. Evaluation Will be at the discounted prices if the time for the discount is not less than 20 days.

Bidder Identification:

- ☐ Check if firm submitting Bid is a DBE certified by Washington State Office of Minority and Women's Business Enterprises.
- ☐ Check here if the firm submitting this bid is a King County certified Small Economically Disadvantaged Business (SEDB).



King County

EXHIBIT D – CONTRACTING OPPORTUNITIES PROGRAM

The King County Contracting Opportunities Program is a public contracting assistance program that is being implemented on a 1-year pilot basis. The purpose of the Program is to maximize the participation of Small Economically Disadvantaged Businesses through the use of a five percent (5%) incentive factor in the award of King County contracts for the purchase of goods and services.

A "Small Economically Disadvantaged Business" (SEDB) means that a business and the person or persons who own and control it are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Program is based on a dollar ceiling for standard business classifications that is set at fifty percent (50%) of the Federal Small Business Administration (SBA) and Owners' Personal Net Worth less than \$750K dollars.

A "Certified Firm" means a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SEDB by the King County Business Development and Contract Compliance (BDCC) office. Information about becoming a Certified Firm, as well as a list of Certified Firms, may be obtained by contacting the BDCC office at (206) 205-0700.

Application of the 5% Incentive Factor and Contract Award:

1. This contract Will be awarded to the lowest responsive, responsible bidder; provided, however, that if the bid price of a responsive, responsible SEDB is within five percent (5%) of the bid price of the lowest responsive, responsible bidder, and that bidder is not a SEDB, then the contract shall be awarded to the low SEDB bidder.
2. All bidders must complete the information required in Exhibit B, Registration, Bidder Identification, for this Invitation To Bid.
3. ☐ Check if firm submitting Bid is a Small Economically Disadvantaged Business Enterprise certified by King County that Will perform the entire contract unassisted.

Name of Certified Business

Certification Number

Owner's Signature

Contact Person and Phone Number

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DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written documentation of the County's determination that the Contractor's Work has been completed in accordance with the Contract.

Addendum/Addenda: Written additions, deletions, clarification, interpretations, modifications or corrections to the solicitation documents issued by the County during the Solicitation period and prior to contract award.

Administrative Change: Documentation provided by County to Contractor, which reflects internal King County procedures not affecting the Contract terms or Scope of Work.

Bidder: Individual, association, partnership, firm, company, corporation or a combination thereof, including joint ventures, submitting a bid to perform the Work.

Buyer: Individual designated by the County to conduct the Contract solicitation process, draft and negotiate contracts, resolve contractual issues and support the Project Manager during Contract performance.

Change Documentation: A written document agreed upon by Project Managers, which if it creates a material change to the Contract term or Scope of Work shall be executed as a Contract Amendment.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or scope of work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the County and the Contractor for completion of the Work under the Contract as set forth on Page 2 of this document.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the County for the performance of Services or Work under the Contract.

Day: Calendar Day.

Final Acceptance: The point when King County acknowledges that the Contractor has preformed the entire Work in accordance with the Contract.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Provide: Furnish without additional charge.

RCW: The Revised Code of Washington.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include all Goods and Services specified under this Contract, including Contract Amendments and settlements.

SECTION 1 - INSTRUCTIONS TO BIDDERS

1-1 Introduction

The purpose of this Invitation to Bid is to establish a contract to provide seven (7) Genie Model TML – 4000 Trailer Mounted Light Towers. The Bidder shall also include all printed information available for this service. See Section 7 for the Statement of Work.

1-2 Bid Submission

Sealed bids shall contain all required attachments and information, be sealed and submitted to the County (hereinafter “County”), Procurement and Contract Services Section, Mailstop EXC-ES-0871, Eighth Floor, Exchange Building, 821 Second Avenue, Seattle, Washington 98104-1598 no later than 2 p.m. Seattle time on September 1, 2005.

The Bidder accepts all risks of late delivery of mailed bids or of misdelivery regardless of fault. Bids properly and timely submitted Will be publicly opened.

Bids shall only be accepted from Contractors and joint ventures able to complete the Contract Work. Subcontractors and joint Bidders are not allowed to submit stand alone ITBs.

If a document holder chooses not to submit a bid, the document holder is requested to advise the Buyer by email if they desire to remain listed for the subject of this ITB and stating the reason they could not submit a bid at this time.

Note: This ITB is available on the Web at <http://www.metrokc.gov/finance/procurement> and by choosing the “RFPs, RFQs, ITBs” menu tab, then click the “New” menu tab, then click on “Goods & Services”, and look for ITB 05-108 JE. Persons who copy the document from the Internet shall inform the Buyer Jim Engan that they have received the document. If they fail to inform the Buyer, they shall not be notified of Addenda as issued.

1-3 Cancellation of ITB or Postponement of Bid Opening

The County reserves the right to cancel the ITB at any time or change the date and time for submitting bids by announcing same prior to the date and time established for bid submittal.

1-4 ITB Signature

Each ITB submission shall include an Invitation to bid cover page signed by an authorized representative of the Bidder.

1-5 Addenda

Each bid shall include acknowledgment of receipt and review of all “**Addenda**” issued during the bid process in Exhibit A – Bid Pricing.

At any time, if the County changes, revises, deletes, clarifies, increases, or otherwise modifies the ITB, the County shall issue a written Addendum to the ITB.

1-6 Questions and Interpretation of the ITB

No oral interpretations as to the meaning of the ITB shall be made to any Bidder. Questions, requests for interpretation, clarification, additions or deletions to the technical or contractual terms in this ITB shall be e-mailed to the Buyer at the County's Procurement Services Division at the location indicated in Subsection 1-8 at least ten (10) Days before the date established for submitting bids. Bidders shall not rely upon any oral statements or conversations, with county employees at the pre-bid conference.

Any interpretation deemed necessary by the County shall be in the form of an Addendum to the ITB and when issued shall be delivered as promptly as is practicable to all parties to whom the ITB has

been issued. All Addenda shall become part of the ITB and any subsequently awarded Contract. Any changes to the ITB shall follow the Addenda process in Subsection 1-6.

1-7 Inquiries

Inquiries concerning the procurement process shall be directed to Jim Engan at e-mail address: jim.engan@metrokc.gov or at phone number (206) 684-1053 or FAX number (206) 684-1470 or in writing to the address on the front of this document.

COMMUNICATIONS CONCERNING THIS BID, WITH OTHER THAN THE LISTED BUYER MAY CAUSE THE BIDDER TO BE DISQUALIFIED.

1-8 Alterations to Documents

Any addition, limitation or provision made with or attached to the bid may render it non-responsive and/or irregular and be cause for its rejection. Alteration by erasure or interlineations must be explained or noted over the signature of the Bidder. No oral, telegraphic, Internet, telephonic or facsimile bids or modifications will be considered.

1-9 Examination of Bid and Contract Documents

The submission of a bid shall constitute an acknowledgment upon which the County may rely that the Bidder has thoroughly examined and is familiar with the ITB, including any work site identified in the ITB, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods and Services to be Provided hereunder.

The failure or neglect of a Bidder to receive or examine such documents, work sites, statutes, regulations, ordinances or resolutions shall in no way relieve the Bidder from any obligations with respect to it's bid or to any Contract awarded pursuant to this ITB. No claim for additional compensation shall be allowed which is based upon a lack of knowledge or misunderstanding of this ITB, work sites, statutes, regulations, ordinances or resolutions.

1-10 Modification of Bid or Withdrawal of Bid Prior to Bid Due Date

At any time before the time and date set for submittal of bids, a Bidder may request to withdraw or modify its bid. Such a request shall be in writing signed by an authorized representative of Bidder as identified on the cover of the ITB. All bid modifications shall be made in writing, executed and submitted in the same form and manner as the original bid.

1-11 Cost of Bid

The County is not liable for any costs incurred by Bidder in the preparation of bids submitted in response to this ITB.

1-12 Bid Withdrawal

Except for claims of error granted by the County, no Bidder may withdraw a bid after the date and time established for submitting bids, or before the award and execution of a Contract pursuant to this ITB, unless the award is delayed for a period exceeding the period for bid effectiveness. The County reserves the right to request a Bidder or Bidders to grant an extension of such effective period.

Requests to withdraw a bid due to error must be submitted in writing along with supporting evidence for such claim including cost breakdown sheets. Requests must be delivered to the County within forty-eight hours after the opening of bids. The County reserves the right to require the submittal of other bid records or information, as the County may deem necessary to evaluate the request. Any review by the County of a bid and/or any review of such a claim of error, including supporting evidence, creates no duty or liability on the County to discover any other Bid error or mistake, and the sole liability for any bid error or mistake rests with the Bidder.

1-13 Bid Requirements

The bid Will contain the completed:

- [Cover Page](#)
- [Contract](#)
- [Exhibit A](#) - Bid Pricing
- [Exhibit B](#) - Registration
- [Exhibit D](#) - Contracting Opportunities Program

The above completed pages and all required additional documents shall be placed in a sealed envelope with the enclosed sticker filled out and attached to the outside of the envelope.

1-14 Forms Required Before Contract Signing

The Bidder shall submit within five (5) Business Days of receipt of written request from the County the following documents and insurance and any applicable bonds, sworn statements, and other conditions precedent to formation of the Contract.

Failure by the Bidder to submit required documents shall result in rejection of the bid.

- [Attachment C](#) - Equal Benefit Worksheet and Declaration Form
http://www.metrokc.gov/finance/procurement/documents/U_042_EB_Worksheet_Declaration.doc
- [Attachment D](#) - Personnel Inventory Report – Complete, sign and submit.
http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/ATTACHMENTD_Personnel_Inventory.doc
- [Attachment E](#) - Affidavit and Certificate of Compliance Regarding Equal Employment Opportunity – Complete, sign and submit.
http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/ATTACHMENTE_CertificateOfCompliance.doc

Please contact the King County Procurement & Contracts Services Section at (206) 684-1681, or the buyer listed in this document to obtain a copy of these forms and/or have questions regarding their completion. Copies of the forms can also be viewed/downloaded by clicking on the hyperlinks above or visiting <http://www.metrokc.gov/finance/procurement/suppliers/forms.asp>.

1-15 Collusion

By signing this bid, the Bidder declares that they have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the work included in this ITB.

If the County determines that collusion has occurred among Bidders, none of the bids from the participants in such collusion shall be considered. The County's determination shall be final.

1-16 Bid Price, Taxes and Effective Date

- A. The bid price shall include everything necessary for the prosecution and completion of the Contract including but not limited to furnishing all Work including: materials, equipment, supplies, tools, plant and other facilities and all management, supervision, labor and service, except as may be Provided otherwise in this ITB.
- B. Bid Prices shall include all freight charges, FOB to the designated delivery points.

- C. Taxes: Sales/use taxes and Federal excise taxes shall not be included in the bid price. The County shall pay any Washington State sales/use taxes applicable to the Contract price or tender an appropriate amount to the Contractor for payment to Washington State. The County is exempt from Federal excise taxes. All other government taxes, duties, fees, licenses, permits, royalties, assessments and charges shall be included in the bid price.
- D. In the event of a discrepancy between the unit price and the extended amount for a bid item, the unit price will govern.
- E. The bid shall remain in effect for 90 Days after the bid close date.

1-17 Protest Procedures

- A. Form of Protest:

In order to be considered, a Protest shall be in writing, addressed to the Manager of the King County Procurement and Contract Services Section of the Department of Executive Services, and include:

 - 1. The name, address, and phone number of the Bidder protesting, or the authorized representative of the Bidder;
 - 2. The ITB Number and Title under which the protest is submitted;
 - 3. A detailed description of the specific grounds for protest and any supporting documentation. It is the responsibility of the protesting Bidder to supplement its protest with any subsequently discovered documents prior to the Manager's decision; and
 - 4. The specific ruling or relief requested.
- B. Who May Protest.
 - 1. Protests prior to bid due date based on Scope of Work or other terms in the ITB document -- any prospective Bidder.
 - 2. Protests following bid due date -- any Bidder submitting a bid on time.
- C. Time to Protest.

Protests based on Scope of Work or other terms in the ITB document shall be received by the County no later than ten (10) Days prior to the date established for submittal of Bids. The County shall receive protests based on other circumstances within five (5) Days after the protesting Bidder knows or should have known of the facts and circumstances upon which the Protest is based. In no event shall a Protest be considered if all Bids are rejected or after award of the Contract.
- D. Determination of Protest.

Upon receipt of a timely written Protest, the Procurement Manager shall investigate the Protest and shall respond in writing to the Protest prior to the award of Contract. Except as provided below, the decision of the Procurement Manager shall be final.
- E. Reconsideration of Manager's Decision.

A financially interested Bidder or Contractor may request that a Manager's adverse decision be reviewed by the Director, of the King County Finance and Business Operations Division ("Director") on a reconsideration basis only. The only justifications for reconsideration are (1) new data, relevant to the underlying grounds for protest and unavailable at the time of the Protest to

the Manager; or (2) the Manager made an Error of law or regulation. The following procedures shall be followed for a reconsideration of the Manager's decision:

1. Form of Request for Reconsideration. In order to be considered, a Request for Reconsideration shall be filed with the Director in writing and include:
 - a. Name, address, and telephone number of the Person protesting or their authorized representative;
 - b. A copy of the written decision of the Manager; and
 - c. Justification for reconsideration by the Director, including all pertinent facts and law on which the Bidder is relying.
2. Time for filing Request for Reconsideration. The financially interested Bidder shall file the Request for Reconsideration no later than five (5) Days of receiving the Procurement Manager's decision.
3. Review of Manager's Decision. Upon receipt of a Request for Reconsideration, the Director or his/her designee shall review 1) the information submitted to and reviewed by the Manager and 2) the decision of the Manager, and shall thereafter issue a final determination regarding the Request for Reconsideration. No other information shall be reviewed unless the basis for the request for reconsideration is new data.

F. Failure to Comply

Failure to comply with the procedures set forth herein may render a Protest untimely or inadequate and may result in rejection thereof by the County.

1-18 Supported Employment Program

The County encourages the creation of supported employment programs for developmentally and/or severely disabled individuals. The County itself has such a program and is actively seeking to do business with those Contractors and Consultants that share this employment approach. If your firm has such a program, or intends to develop such a program during the life of this Contract, please submit Documentation supporting this claim with your bid. If you have questions, or need additional information, please contact the Community and Human Services Division, Developmental Disabilities Division, 206-296-5268.

SECTION 2 - BID EVALUATION & CONTRACT AWARD

2-1 Evaluation of Bids

Bids Will be evaluated by the County to determine which bid, if any, should be accepted in the best interest of the County. When [Exhibit D](#), "King County Contracting Opportunities Program", is incorporated in the ITB, the determination of lowest responsive, responsible bidder Will include the application of the five (5) percent incentive factor for Small Economically Disadvantaged Businesses (SEDB).

A. Responsiveness

The County Will consider all the material submitted by the Bidder to determine whether the Bidder's offering is in compliance with the terms and conditions set forth in this ITB.

B. Responsibility

1. The County shall consider all the material submitted by the Bidder, and other evidence it may obtain otherwise, to determine whether the Bidder is capable of and has a history of successfully completing contracts of this type. This may include requiring the Bidder to provide references from customers who have been provided the same or equivalent Goods or Services. References shall include the names and addresses of the parties to whom such goods or Services were provided and the name and phone number of contact Persons with such parties.
2. The following elements shall be given consideration by the County in determining whether a Bidder is responsible:
 - a. The ability, capacity and skill of the Bidder to perform the Contract or Provide the service required;
 - b. The character, integrity, reputation, judgment and efficiency of the Bidder;
 - c. Whether the Bidder has the financial resources and experience to perform the Contract properly and within the times specified;
 - d. The quality and timeliness of performance by the Bidder on previous contracts with the County and with other third parties, including, but, not limited to, the relative costs, burdens, time and effort necessarily expended by the County and such governments and agencies in securing satisfactory performance and resolving claims;
 - e. The previous and existing compliance by the Bidder with laws relating to public contracts or Services, including, but not limited to, Disadvantaged Business Enterprise (DBE) and equal employment opportunity requirements;
 - f. The history of the Bidder in filing claims and litigation on prior projects involving the County or third parties; and
 - g. Such other information having a bearing on the decision to award the Contract.
3. Financial Resources

Submit proof of adequate financial resources, which would be available to the Bidder for the prosecution, and completion of the Work as required. Refusal to provide such information when requested shall cause the bid to be rejected.

C. Financial Reporting

The Bidder shall Provide a current copy of its Dun and Bradstreet report if requested by the County.

D. King County Contracting Opportunities Program

1. The King County Contracting Opportunities Program is a public contracting assistance program that is being implemented on a one (1) year pilot basis. The purpose of the Program is to maximize the participation of Small Economically Disadvantaged Businesses through the use of a five percent (5%) incentive factor in the award of King County contracts for the purchase of goods and services.
2. A "Small Economically Disadvantaged Business: (SEDB) means that a business and the person or persons who own and control it are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Program is based on a dollar ceiling for standard business classification that is set at fifty percent (50%) of the Federal Small Business Administration (SBA) and Owner's Personal Net Worth less than \$750K dollars.
3. A "Certified Firm" means a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SEDB by the King County Business Development and Contract Compliance (BDCC) office. Information about becoming a Certified Firm, as well as a list of Certified Firms, may be obtained by contacting the BDCC office at (206) 205-0700.

2-2 Rejection of Bids

- A. The County reserves the right to reject any bid for any reason including, but not limited to, the following:
 1. Any bid which: 1) contains any omission, erasure or irregularity; 2) is incomplete, obscure, irregular or lacking necessary detail and specificity; 3) has any qualification, addition, limitation or provision attached to the bid; 4) omits a price where pricing is required; 5) has unbalanced pricing in the opinion of the County, 5) is not approved as being compliant with the requirements for equal employment opportunity or Domestic Partner Benefits;
 2. Any bid from Bidders who: in the sole judgment of the County) lack the qualifications or responsibility necessary to perform the Work; 2) fails or neglects to complete and submit any qualifications information within the time specified by the County, 3) is not registered or licensed as may be required by the laws of the state of Washington or local government agencies;
- B. In consideration for the County's review and evaluation of its bid, the Bidder waives and releases any claims against the County arising from any rejection of any or all bids, including any claim for costs incurred by Bidders in the preparation and presentation of bids submitted in response to this ITB. In addition, Bidders waive the costs of providing additional information requested or cost of modifications made to its internal structure, systems or organizations.
- C. The County reserves the right to waive informalities and irregularities in bids.
- D. The County shall find non-responsive and reject any bid which does not comply with the DBE requirements under this ITB, if applicable.

2-3 Procedures When Only One Bid is Received

If the County receives a single responsive, responsible bid, the County shall have the right, in its sole discretion, to extend the bid acceptance period and may conduct a price or cost analysis on such bid. The Bidder shall promptly Provide all cost or pricing data, documentation and explanation requested by the County to assist in such analysis. By conducting such analysis, the County shall not be obligated to accept the single bid; the County reserves the right to reject such bid or any portion thereof.

2-4 Insurance And Other Bid Requirements

The Bidder to whom the County awards a Contract pursuant to this ITB shall file with the County evidence of insurance from insurer(s) satisfactory to the County certifying to the coverages of insurance set forth in this ITB. In addition any applicable bonds, sworn statements, and other conditions precedent to formation of the Contract shall be submitted within ten (10) Days of receipt of a written request from the County.

Failure by the Bidder to submit satisfactory evidence of insurance and other required condition precedent documents shall result in rejection of the bid.

2-5 Public Disclosure of Bids

This procurement is subject to the Washington Public Disclosure Act, RCW 42.17.250 et seq. Bids submitted under this ITB shall be considered public documents unless the documents are exempt under the public disclosure laws. After the selection process has been concluded and a contract has been signed by both parties bids shall be available for inspection and copying by the public

If a Bidder considers any portion of its bid to be protected under the law, the Bidder shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If the County determines that the material is not exempt from public disclosure law, the County shall notify the Bidder of the request and allow the Bidder fifteen (15) Days to take whatever action it deems necessary to protect its interests. If the Bidder does not take such action within said period, the County shall release the portions of the bid deemed subject to disclosure. By submitting a bid, the Bidder assents to the procedure outlined in this subsection and shall have no claim against the County on account of actions taken under such procedure.

2-6 Contract Award

Contract award, if any, shall be made by the County to the low, responsive, responsible Bidder. The County shall have no obligations until a Contract is signed between the Bidder and the County. The County reserves the right to award one or more contracts as it determines to be in its best interest.

SECTION 3 - STANDARD CONTRACTUAL TERMS & CONDITIONS

3-1 Administration

This Contract is between the County and the Contractor who shall be responsible for providing the Work described herein. The County is not party to defining the division of Work between the Contractor and its Subcontractors, if any, and the Scope of Work has not been written with this intent. The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform Work hereunder.

The Contractor's performance under this Contract may be monitored and reviewed by a Project Manager appointed by the County. Reports and data required to be Provided by the Contractor shall be delivered to the Project Manager. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Project Manager for response.

3-2 Contract Changes

No oral order or conduct by the County shall constitute a Contract change. Both parties shall agree to contract changes in writing.

If any Contract change causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, an equitable adjustment in the Contract price, the project schedule, or both shall be made and the Contract and all related purchase orders(s) modified and agreed to in writing by both parties. Every contract change may require a Cost or Price Analysis to determine the reasonableness of the proposed adjustments to Contract price or schedule. Contract changes do not require notice to sureties by County.

3-3 Cost or Price Analysis

Cost or Price Analysis may be required by the County for the evaluation of contract changes, terminations, revisions to contract requirements or other circumstances as determined by the County.

3-4 Termination for Convenience/Default/Non-Appropriation

A. Termination for Convenience

The County for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Contractor shall immediately stop Work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable Contract close-out costs and profit on that portion of the Work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract, applicable laws and regulations.

B. Termination for Default

If the Contractor does not deliver Work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A Notice to Cure shall be served on the Contractor by certified mail (return receipt requested) or delivery service capable of providing a receipt. The Contractor shall have ten (10) Days to cure the default or provide the County with a detailed written plan, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination;
3. The Contractor shall only be paid for Work delivered and Accepted, or Work performed in accordance with the manner of performance set forth in the Contract less any damages to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If the Contract is terminated for non-appropriation:

1. The County shall be liable only for payment in accordance with the terms of this Contract for Services rendered prior to the effective date of termination; and,
2. The Contractor shall be released from any obligation under this contract or a related Purchase Order to Provide further Work pursuant to the Contract as are affected by the termination.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

3-5 Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event or any other cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including Termination for Default.

3-6 Taxes, Licenses, and Certificate Requirements

This Contract and any of the Work Provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to provide the specified goods or Services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing.

The Contractor and subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

3-7 Assignment

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. An assignment shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee, and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

3-8 Indemnification and Hold Harmless

- A. In providing services under this Contract, the Contractor is an independent contractor, and neither the Contractor nor its officers, agents or employees are employees of the County for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by or on behalf of the Contractor, its employees and/or others by reason of this Contract. The Contractor shall protect, indemnify, defend and save harmless the County and its officers, agents and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits or taxes; and/or (2) the supplying to the Contractor work, services, materials, and/or supplies by Contractor employees or other suppliers in connection with or in support of the performance of this Contract.

- B. The Contractor further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract, or the Termination section.
- C. The Contractor shall protect, defend, indemnify, and save harmless the County, [and the State of Washington or US Government (when any funds for this Contract are provided by them)], their officers, employees, and agents from any and all costs, fees (including attorney fees), claims, actions, lawsuits, judgments, awards of damages or liability of any kind, arising out of or in any way resulting from the negligent acts or omissions of the Contractor, its officers, employees, subcontractors of any tier and/or agents. The Contractor agrees that its obligations under this

paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, subcontractors of any tier or agents.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this paragraph C, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

- D. For purposes of paragraphs A and C above, the Contractor, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
- E. In the event the County incurs attorney fees and/or costs in the defense of claims within the scope of paragraphs A and C above, such attorney fees and costs shall be recoverable from the Contractor. In addition King County shall be entitled to recover from the Contractor its attorney fees, and costs incurred to enforce the provisions of this section.
- F. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Contract.
- G. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

3-9 Applicable Law and Forum

Except as hereinafter specifically provided, this Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Contract may only be filed in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

3-10 Conflicts of Interest and Non-Competitive Practices

A. Conflict of Interest

By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

B. Contingent Fees and Gratuities

By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

3-11 Disputes, Claims and Appeals

The Contractor shall address questions or claims regarding the Contract in writing to the Buyer and Project Manager, within ten (10) Days of the date in which the Contractor knows or should know of the question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent alternative dispute resolution or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the County.

3-12 Mediation and Arbitration

Nothing in this subsection precludes any party from seeking relief from King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle. If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be resolved by arbitration, and judgment upon the award rendered by the arbitrator may be entered in either King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle.

3-13 Retention of Records, Audit Access and Proof of Compliance with Contract

A. Retention of Records

The Contractor and its subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

B. Audit Access

1. Federal, state or County auditors shall have access to Contractor's and its Subcontractors' records for the purpose of inspection, Cost or Price Analysis, audit or other reasonable purposes related to this Contract. Federal, state or County auditors shall have access to records and be able to copy such records during the Contractor's normal business hours. The Contractor shall Provide proper facilities for such access, inspection and copying.
2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to the Contractor and for any other reason deemed appropriate and necessary by the County. Audits shall be conducted in accordance with generally accepted auditing principles and/or federal, state or County audit procedures, laws or regulations. The Contractor shall fully cooperate with the auditor(s).

3. If an audit is commenced more than sixty (60) Days after the date of final payment for Contract Work, the County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

C. **Proof of Compliance with Contract**

The Contractor shall, upon request, Provide the County with satisfactory documentation of the Contractor's compliance with the Contract.

In addition, the Contractor shall permit the County, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all Work, materials, payrolls and other data and records involving the Contract.

3-14 Other Public Agency Orders

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract. The County does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

3-15 Recycled Products Policy

The County promotes the purchase and utilization of recycled material and products where available. Recycled material means material and byproducts, which have been recovered or diverted from solid waste disposal for the purpose of recycling. It does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the event of similar pricing, availability and other factors affecting the solicitation, preference may be given to products containing recycled material.

Ref: KCC 10.14

3-16 Conflicts of Interest - Current and Former Employers

The County seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former County employees in transactions with the County. Consistent with this policy, no current or former County employee may contract with, influence, advocate, advise, or consult with a third party about a County transaction, or assist with the preparation of Proposals submitted to the County while employed by the County or within one (1) year after leaving the County's employment, if he/she participated in determining the Work to be done or process to be followed while a County employee.

All Bidders, vendors or Contractors who anticipate contracting with the County shall identify at the time of offer, such current or former County employees involved in preparation of bids or the anticipated performance of the Work if awarded the Contract. Failure to identify former County employees involved in this transaction may result in the County's denying or terminating this Contract. In addition, after award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract

Ref: KCC 3.04.015C; 3.04.035B; 3.04.035D; 3.04.035E; 3.04035H1; 3.04.035H2.

3-17 Nondiscrimination and Equal Employment Opportunity

A. **Nondiscrimination in Employment and Provision of Services.**

During the performance of this Contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County

Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to this Contract.

B. Nondiscrimination in Subcontracting Practices.

During the solicitation, award and term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

C. Compliance with Laws and Regulations.

The Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit discrimination.

Unfair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract.

D. Record-keeping Requirements and Site Visits.

The County may, at any time, visit the project site, Contractors' and Subcontractors' offices to review records related to the solicitation, utilization, and payment to subcontractors and suppliers in compliance with Executive Order 11246 as amended by Executive Order 11375. This provision includes compliance with any other requirements of this Section. The Contractor shall provide all reasonable assistance requested by King County during such visits. The Contractor shall maintain, for six (6) years after completion of all work under this Contract, the following:

1. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to subcontractors and suppliers in this Contract.
2. The Contractor shall make the foregoing records available to King County for inspection and copying upon request. Any violation of the mandatory requirements of the provisions of this subsection shall be a material breach of contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment.

E. Discrimination In Contracting

King County Code Chapter 12.17 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract. During the performance of this Contract, neither Contractor nor any party subcontracting under the authority of this Contract shall discriminate or engage in unfair contracting practices prohibited by KCC 12.17.

3-18 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

3-19 Nonwaiver of Breach

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

3-20 Non-Discrimination in Benefits to employees with Domestic Partners

King County's Equal Benefits (EB) Ordinance 14823 states that to be eligible for award of contracts at a cost of \$25,000.00 or more, firms must not discriminate in the provisions of employee benefits between employees with spouses, and employees with domestic partners. The successful Contractor, bidder or proposer shall be required to complete a Worksheet and Declaration form. Compliance with Ordinance 14823 is a mandatory condition for execution of a contract. The EB Compliance forms, and Ordinance 14823 are available online at:

http://www.metrokc.gov/finance/procurement/documents/U_042_EB_Worksheet_Declaration.doc

SECTION 4 - SPECIFIC CONTRACTUAL TERMS & CONDITIONS

4-1 Type of Contract

This ITB may result in the award of one or more Contracts. King County Will utilize these Contracts as indefinite quantities Contracts and issue standard purchase orders to the Contractor citing item number, description, deliver terms and Contract price. The standard purchase orders will be the authorization for the Contractor to perform the service or deliver the goods as directed.

4-2 Payment Procedures

A. Invoices

The Contractor for Work Accepted by the County shall furnish invoices to:

King County Accounts Payable
M/S EXC-ES-0875
Exchange Building, 8th floor
821 Second Avenue
Seattle, WA 98104-1598

Important – When a purchase order is issued against this Contract that has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery Accepted by the County. All invoices shall include the following information: purchase order number, requester's name and phone number, date of invoice, invoice number and invoice total. For each item in the Contract provide the: item number, quantity, description, contract price and when applicable provide the manufacture, list price and discounts.

FAILURE TO COMPLY WITH THESE REQUIREMENTS OR TO PROVIDE AN INVOICE IN CONFORMANCE WITH THE CONTRACT MAY DELAY PAYMENT.

B. Payments

Within thirty (30) Days after receipt of an invoice, the County shall pay the Contractor for accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the Invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State sales/use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to Washington, or the County will make payment directly to the State.

4-3 Advance Payment Prohibited

No advance payment shall be made for the Work furnished by Contractor pursuant to this Contract.

4-4 Purchase Orders

Purchase orders shall be issued referencing this Contract number. Purchase order(s) shall define and authorize the Work by the Contractor based on the prices contained in the bid. The purchase orders issued by the County may reflect agreed to modification of Contract terms, funding or other matters subject to subsection 3-2, Contract Changes.

4-5 Shipping Charges

All prices shall include freight FOB to the designated delivery point. The County shall reject requests for additional compensation for freight charges.

4-6 Packing Slips

Each delivery to the County shall have a packing slip enclosed that identifies the requester, Contract number, requisition number, King County part number, unit price and quantity of each part shipped. If the delivery is a partial shipment, indicate on the packing slip that it is not a complete shipment of that requisition and identify the items not shipped and provide a projected completion date of the requisition.

If the delivery combines items from more than one requisition, separate packing slips must be included in the shipment for each requisition. A packing slip will not serve as an invoice. A separate invoice must be sent to Accounts Payable.

4-7 Delivery Points

This Contract requires all goods and/or services and supervision necessary to furnish the goods and services as set forth herein to be made to any sites in King County to be determined at the sole discretion of King County.

4-8 Warranty Provisions

A. No Waiver of Warranties and Contract Rights.

Conducting of tests and inspections, review of Scope of Work or plans, payment for a Work, or Acceptance or Final Acceptance of the Work by the County shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.

B. Warranty Term.

The Contractor warrants that the Work performed under this Contract shall be free from defects in material and workmanship, and shall conform to all requirements of this Contract, for a period of twelve (12) months from date of Final Acceptance of such Work by the County. Any Work corrected shall be subject to this subsection to the same extent as the Work initially provided.

C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors.

The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the County by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference shall not excuse the Contractor's full compliance with its obligations under this Contract. The Contractor shall cooperate with the County in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

SECTION 5 - DEPARTMENT OF JUSTICE REQUIREMENTS

5-1 Applicability and Federal Grant Contract

This procurement is subject to a financial assistance contract between the County and the U.S. Department of Justice. The successful Contractor is required to comply with all terms and conditions prescribed in third party contracts in the grant contract between the U.S. Department of Justice (DOJ) and the County.

New federal laws, regulations, policies and administrative practices may be established after the date this contract is established and may apply to this contract. To achieve compliance with changing federal requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require subcontractors comply with revised requirements as well.

5-2 No Federal Government Obligations to Third Parties

The Contractor agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by DOJ. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions

5-3 Equal Employment Opportunity

In connection with the execution of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor shall take affirmative action to ensure that the hiring of applicants and treatment of employees during employment is conducted without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

(Authorities: Executive Order 11246, as amended by Executive Order 11375; Title VII of the Civil Rights Act, as amended, 42 USC § 2000e; section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623; section 102 of the Americans with Disabilities Act, as amended, 42 USC §§ 12101 et seq.; 29 CFR Part 1630; 41 CFR § 60-1.4).

5-4 Title VI Compliance

The Contractor shall comply with and shall ensure the compliance by all subcontractors under this Contract with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and the regulations of the federal Department of Justice, "Nondiscrimination in Federally-Assisted Programs —Implementation of Title VI of the Civil Rights Act of 1964," 28 CFR Part 42, (hereinafter "Regulations") as they may be amended from time to time.

During the performance of this Contract, the Contractor, for itself, its assignees and successors-in-interest agrees as follows:

A. Nondiscrimination

The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, creed, sex, disability, age or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 42.104 of the Regulations.

B. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, creed, sex, disability, age or national origin.

C. Information and Reports

The Contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the Federal Department of Justice (DOJ) to be pertinent to ascertain compliance with such regulations, orders and instructions. The Contractor shall maintain all required records for at least three (3) years after the County makes final payment and all other pending matters are closed. Where any information is required and it is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the County or the Department of Justice, as appropriate, and shall set forth efforts made to obtain the information.

D. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the County shall impose such contract sanctions as it or the DOJ may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or,
2. Cancellation, termination or suspension of the Contract, in whole or in part.

E. Incorporation of Provisions

The Contractor shall include the provisions of paragraphs A through E of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the County or the DOJ may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that, in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

5-5 Cargo Preference - Use of U.S. Flag Vessels or Air Carriers

In the event that ocean shipment or international air travel is required for any equipment, material or commodities pursuant to this Contract, the Contractor shall:

- A. Utilize privately owned United States-flag commercial vessels to ship at least fifty (50%) percent of the gross tonnage involved, computed separately for dry bulk carriers, dry cargo liners and

tankers, whenever shipping any equipment, materials or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

- B. Furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A of this section, to the County, through the prime Contractor in the case of subcontractor bills-of-lading, and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project
- C. Utilize United States flag air carriers to the extent such carriers provide the air transportation needed, or accomplish the Contractor's mission. The Contractor agrees to utilize United States flag air carriers even though comparable or a different kind of service can be provided at less cost by a foreign air carrier, a foreign air carrier is preferred by or more convenient for the Contractor, or service by a foreign air carrier can be paid for in excess foreign currency, unless United States flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of those monies
- D. Insert the substance of the provisions of this section in all subcontracts issued pursuant to this Contract.
- E. (Required by 46 CFR Part 381 and 41 CFR Part 301-3.6).

5-6 Audit and Inspection of Records

In the case of all negotiated contracts and contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive bidding procedures, Contractor agrees that the County, the Comptroller General of the United States or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, Contractor agrees to maintain all required records for at least three (3) years after the County makes final payment and all other pending matters are closed.

5-7 DOJ Protest Procedures

Bidders are hereby notified that if this Contract is funded in whole or in part by the Federal Department of Justice, the Federal Department of Justice (DOJ) may entertain a protest that alleges violation of federal law or regulation, or that the County failed to have or follow written protest procedures. 28 CFR Part 66.36(12). Bidders must file a protest with the DOJ not later than 5 working days after the County renders a final decision or 5 working days after the Bidder knows or has reason to know that the County has failed to render a final decision. The protesting party must notify the County if it has filed a protest with the DOJ. After 5 days, the County will confirm with DOJ that DOJ has not received a protest.

The County will not award a contract for 5 working days following its decision on a Bid protest or while a protest to the DOJ is pending unless the County determines that: (1) the items to be procured are urgently required; (2) delivery of performance will be unduly delayed by failure to make the award promptly; or (3) failure to make prompt award will otherwise cause undue harm to the County or the Federal Government.

5-8 Interest of Members or Delegates of Congress

Pursuant to 41 USC § 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

5-9 Certification Regarding Debarment, Suspension and Other Responsibility Matters

Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 note and federal regulations in 28 CFR 67, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this contract. To assure that such entities and individuals are not involved as participants on this DOJ-financed contract, if the contract exceeds \$100,000, each Proposer shall complete and submit, as part of its Proposal, the certification contained in Attachment K for itself, its principals and its subcontractor(s) for any subcontract in excess of \$100,000. The inability of a Proposer to provide a certification in Attachment K will not necessarily result in denial of consideration for contract award. A Proposer that is unable to provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation shall disqualify the Proposer from participation under this Proposal. The County, in conjunction with DOJ, will consider the certification or explanation in determining contract award. No contract will be awarded to a potential third-party contractor submitting a conditioned debarment or suspension certification, unless approved by the DOJ.

The certification is a material representation of fact upon which reliance is placed in determination of award of contract. If at any time the Proposer or Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to the County. If it is later determined that the Proposer knowingly rendered an erroneous certification, or failed to notify the County immediately of circumstances that made the original certification no longer valid, the County may disqualify the Proposer. If it is later determined that the Contractor knowingly rendered an erroneous certification, or failed to notify the County immediately of circumstances which made the original certification no longer valid, the County may terminate the contract, in addition to other remedies available including DOJ suspension and/or debarment.

5-10 Anti-Kickback

The County and contractors are required to comply with the Anti-Kickback Act of 1986, 41 USC §§ 51 et seq. Under state and federal law, it is a violation for County employees, Proposers, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.

"Kickback" as defined by Federal Acquisition Regulation (FAR) 52.203-7, and 41 USC § 52(2), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime Contractor, prime Contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

5-11 False or Fraudulent Statements or Claims

The Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the County in connection with this project, the County reserves the right to pursue the procedures and impose on the recipient the penalties of 18 USC § 1001, 31 USC §§ 3729 and 3801 et seq., as may be appropriate. The terms of Department of Justice regulations, "Program Fraud Civil Remedies," 28 CFR Part 71, are applicable to this project.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

5-12 Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 et seq.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

5-13 Environmental Requirements

The Contractor agrees to comply with all applicable standards, orders or requirements as follows:

A. Environmental Protection

The Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, et seq., consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note. DOJ regulatory requirements on environmental matters at 28 CFR Part 61; Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 42 USC § 4321 et seq. and 40 CFR Part 1500 et seq.

5-14 Preference for Recycled Products

To the extent practicable and economically feasible, the Contractor agrees to provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in the EPA Guidelines at 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962, and Executive Order 12873.

SECTION 6 - TECHNICAL SPECIFICATIONS (STATEMENT OF WORK)

6-1 Lot Description

The Lot will consist of seven (7) Each, Genie Model TML –4000 Trailer Mounted Light Towers with the following Options / Requirements:

- 1) Manufactured in 2005
- 2) Water-cooled 3 cylinder Deutz diesel engine (14.3 hp)
- 3) 60 Hz Generator Package
- 4) Standard Convenience Receptacle Package
- 5) Combination Hitch
- 6) 50 Gallon Fuel Tank
- 7) 4 1,000 Watt Metal Halide Lamps
- 8) All Shipping & Handling Fees

6-2 Delivery Location

Contact: Chuck Cox, Phone (206) 684-2764

King County Metro Transit Police

Attn: Chuck Cox

1301 Airport Way South, MS TSO-TR-0200

Seattle, WA 98134

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BID OPENING LABEL

Complete the form below (or a reasonable facsimile thereof) and affix to the exterior lower left hand corner of the submission package.

U R G E N T – SEALED BID ENCLOSED Do Not Delay – Deliver Immediately	
U R G E N T	 King County King County Procurement & Contract Services Section Exchange Building, 8 th Floor 821 2nd Ave., EXC-F1-0862 Seattle, WA 98104-1598
	Bid No. 05-108-JE
	Bid Title Genie Model TML-4000 Light Tower
	Due Date 9/1/05
	Vendor
U R G E N T	